Mahzan bin Abdullah & Anor v Lee Wing Hong & Anor (No 2)

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(IM)-745–04 OF 2012
SULONG MATJERAIE FCJ, CLEMENT SKINNER AND APANDI ALI JJCA
28 SEPTEMBER 2012

Civil Procedure — Judgment and orders — Order made by court — High Court refused to make order sought by appellants — Appeal against refusal — Whether High Court judge erred in refusing to make order sought by appellants — Whether High Court judge misunderstood nature of application

On 15 September 2009, the High Court had dismissed the appellants' claim for specific performance of a sale and purchase agreement ('the SPA') entered into between the appellants and the developer and seven others. The appellants had appealed against this decision. On 16 July 2012, this panel of the Court of Appeal ordered that the parties were at liberty to apply to the High Court. Pursuant to this order, the appellants applied to the High Court for certain ancillary reliefs. However, the High Court refused to make the order sought by the appellants on the grounds that the appellants' had no locus standi to make the application. According to the High Court judge, the appellants' right to make their application for ancillary relief was in question because this court had not made any ruling in respect of the appellants' assignment of their rights to the property in dispute. This was the appellant's appeal against that decision.

Held, allowing the appeal with costs fixed at RM50,000:

(1) The High Court judge was wrong to say that this panel of the Court of Appeal had not dealt 'with the question of assignment although submitted upon' because the question of assignment or locus standi was not one of the grounds of appeal before this court. As such, this court had rightfully not dealt with this issue (see para 12).

(2) The High Court judge's refusal to grant the application on the grounds that it was misconceived was incorrect. The appellants had already explained that since the developer was a defunct company, they had requested for the registrar of the High Court to be authorized to execute any document that may be necessary to effect the transfer sought. The High Court judge had thus misunderstood the nature of the application before her (see para 13).

(3) In the circumstances, the decision of the High Court judge was set aside.

There was no need to make any further orders as the orders given earlier by this court should remain in force (para 14).

[Bahasa Malaysia summary

Pada 15 September 2009, Mahkamah Tinggi telah menolak tuntutan perayu-perayu untuk pelaksanaan spesifik perjanjian jual dan beli ('SPA') yang dimasuki di antara perayu-perayu dan pemaju dan tujuh orang yang lain. Perayu-perayu telah merayu terhadap keputusan tersebut. Pada 16 Julai 2012, panel Mahkamah Rayuan ini memerintahkan bahawa pihak-pihak adalah bebas untuk memohon kepada Mahkamah Tinggi. Berikutan perintah ini perayu-perayu memohon kepada Mahkamah Tinggi untuk relief-relief sampingan tertentu. Mahkamah Tinggi walau bagaimanapun enggan membuat perintah yang dipohon oleh perayu-perayu atas alasan bahawa perayu-perayu tidak mempunyai locus standi untuk membuat permohonan tersebut. Mengikut hakim Mahkamah Tinggi, hak perayu-perayu untuk membuat permohonan mereka untuk relief-relief sampingan adalah dipersoalkan kerana mahkamah ini tidak membuat apa-apa perintah berkaitan penyerahhakkan hak perayu-perayu kepada hartanah yang dipertikaikan. Ini adalah rayuan perayu terhadap keputusan tersebut.

Diputuskan, membenarkan rayuan dengan kos ditetapkan pada RM50,000:

(1) Hakim Mahkamah Tinggi adalah salah untuk menyatakan bahawa panel Mahkamah Rayuan ini tidak membincangkan 'with the question of assignment although submitted upon' kerana soalan penyerahhakkan atau locus standi bukan salah satu alasan rayuan di hadapan mahkamah ini. Oleh itu, mahkamah ini telah secara betul tidak membincangkan isu ini (lihat perenggan 12).

(2) Keengganan hakim Mahkamah Tinggi untuk membenarkan permohonan atas alasan yang ia adalah salah tanggap adalah tidak betul. Perayu-perayu telah menjelaskan bahawa memandangkan pemaju adalah syarikat yang tidak berfungsi lagi, mereka telah memohon untuk pendaftar Mahkamah Tinggi diberikan kuasa untuk melaksanakan apa-apa dokumen yang mungkin perlu untuk melaksanakan pemindahan yang dipohon. Hakim Mahkamah Tinggi oleh itu salah faham sifat permohonan di hadapan beliau (lihat perenggan 13).

(3) Dalam keadaan ini, keputusan hakim Mahkamah Tinggi diketepikan. Tidak perlu untuk membuat perintah-perintah selanjutnya memandangkan perintah-perintah yang diberikan terdahulu oleh mahkamah ini patut kekal berkuat kuasa (lihat perenggan 14).]

Notes

For cases on order made by court, see 2(1) *Mallal's Digest* (4th Ed, Reissue) paras 4957–4766.

Legislation referred to

Companies Act 1965 ss 309, 311
National Land Code s 214

Harpal Singh Grewal (Harwinder Kaur with him) (AJ Ariffin, Yeo & Harpal) for the appellants.
Manjit Singh Saini (David Hu with him) (Harun Idris Yeoh & Partners) for the respondents.

Sulong Matjeraie FCJ:

[1] This is the unanimous decision of this court.

[2] This is a hearing of an appeal against the decision of the learned High Court judge handed down on 26 March 2012. By her decision, the learned judge refused to grant the appellants' certain ancilliary reliefs which the appellants had applied to the High Court for, pursuant to an earlier order made by this panel of the Court of Appeal on the 16 July 2010. On that date this court allowed the appeal of the appellants against the decision of Justice Tee Ah Sing handed down on 15 September 2009 dismissing the appellants claim for specific performance of a sale and purchase agreement entered into between the appellants and the developer Perusahaan Langat Sdn Bhd and seven others.

[3] Having allowed the appellants appeal against Justice Tee Ah Sing's decision, this panel ordered that the parties were at liberty to apply to the High Court.

[4] When the appellants applied to the High Court for the consequential orders pursuant to our above mentioned order, the application was refused by the learned High Court judge.

[5] Mr Manjit Singh Saini of counsel for the respondents here had argued before the High Court judge that the appellants here had no locus standi to make application for ancilliary reliefs as they had assigned away their rights in the property. Learned counsel went on to say that the Court of Appeal never considered the question of assignment.

[6] In her judgment dated 26 March 2012, the learned High Court judge refused to make the order sought by the appellant as she said:

> The Court of Appeal did not make any ruling in respect of the assignment of their rights to the property from the applicant (*meaning these appellants*) to the third plaintiff although submitted upon. (Emphasis added.)

[7] The learned judge therefore went on to say that the locus standi of the applicants to make this application was in question. A

[8] In our respectful view the learned High Court judge erred in saying what we have just quoted her as saying above. Justice Tee Ah Sing in his written judgment had expressly, in paras 13.1–13.3, dealt with two questions ie: B

(a) whether the appellants here (as plaintiffs in the court below) had absolutely assigned away their rights in the property in dispute; and

(b) whether the third plaintiff is prohibited under s 104 read together with s 214 National Land Code is prohibited from transferring the said property. C

[9] In para 13.4 of his judgment Justice Tee Ah Sing when referring to the contention raised by the respondents here about the assignment stated: D

> this contention was not pleaded in the statement of defence.

[10] At para 13.5 of his judgment Justice Tee went on to say: E

> Since the two issues have not been pleaded by the second, third and fourth defendants in their defence this court is not entitled to decide on the said issues as the parties are bound by their pleadings, (see the case of *Yew Wan Leong v Lai Kok Chye* [1990] 2 MLJ 152).

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[11] It is undisputed between the parties that the defendants in the court below who are now the respondents here did not appeal against that part of the decision of Justice Tee Ah Sing which we have quoted above.

[12] Therefore when the appeal against Justice Tee Ah Sing's decision was heard by this panel of the Court of Appeal on the 16 July 2010, *the question of assignment or locus standi was not one of the grounds of appeal before us and rightfully we did not deal with it and therefore the learned High Court judge was wrong to say that this panel of the Court of Appeal 'did not deal with the question of assignment although submitted upon'*. G H

[13] The learned High Court judge also refused the appellants application before her on the ground that it was misconceived as it was made under ss 309–311 of the companies act wherein the registrar referred to in those sections refers to the registrar of companies and not to the registrar of the High Court. With respect this statement is incorrect because as explained by Dato' Harpal Singh Grewal, of counsel for the appellants, ss 309–311 of the Companies Act 1965 (Act 125) deal with defunct companies. In this case the developer, Perusahaan Langat Sdn Bhd, was a defunct company. But in their I

application, the appellants did not make any request for the registrar of companies to sign any documents. Instead the request was for the registrar of High Court to be authorised to execute any document that may be necessary to effect the transfer sought. Therefore in our view the learned High Court judge misunderstood the nature of the application before her.

[14] In view of the above, the appeal is allowed with costs. The decision of High Court judge is set aside. There is no need to make any further order as we have given the orders earlier and have clarified on those orders. Therefore those orders shall remain in force.

[15] Learned counsel for the appellants asked for RM75,000 as costs and after hearing the submission of learned counsel for the respondents and in the light of the circumstances surrounding this case, we unanimously fixed costs at RM50,000. Deposit to be refunded to the appellants.

Appeal allowed with costs fixed at RM50,000.

Reported by Kohila Nesan